the accused acting in a strange manner; Dr. Samy, who was the prison doctor, said that he had seen the accused during the ten months he was in prison from October 1935 and that his mental condition was normal. The accused was arrested on 17th July, when he spoke normally and appeared sensible to the police. On the evening of 17th he made a long detailed statement to a magistrate. On the morning of 19th he was seen by Dr. Apparajoo, when he talked sensibly and Dr. Apparajoo suspected nothing. Dr. Samy saw him in the prison for the first time after his arrest on 20th July and saw him every day and questioned him till 4th August. He appeared normal and answered questions quite rationally. From 22nd July to 3rd August he was in hospital with gastro-enteritis. During the first week Dr. Samy spent 10 to 15 minutes with him each day, and later 5 to 10 minutes. On 4th August Dr. Samy received information that accused had had mental trouble the previous day and he was transferred to the General Hospital for observation. Dr. Samy still observed him and noticed nothing abnormal until 11th, when "his speech was rather incoherent, and he said he did not sleep the previous night. But the night dresser reported that he had slept well. On the 12th August he was noisy his speech was still incoherent. He was in the same condition until 15th August." That was the last time Dr. Samy saw him until he returned from leave in December.

Having been certified insane accused was sent to the Mental Hospital, Singapore, and he was ultimately returned to Penang certified as sane. From 4th December to the date of the trial (17th February 1938) Dr. Samy kept him under observation and noticed nothing abnormal.

The case for the defence was put clearly and fairly to the Jury by the trial Judge. They were correctly charged on the lesser degree of proof required of the accused.

It was argued before this Court that the trial Judge had in effect told the Jury that the accused must adduce evidence of a document or by witnesses that he was insane. We see nothing in the summing up to suggest that the jury could not lawfully find a special verdict on the Crown evidence or that the accused must call or give evidence.

There is nothing in the criticism of the judge's statement that "insanity, in so many capital cases is put up as a last resort."

The verdict of the jury negatived the defence that the appellant was insane on 14th July, and althcugh this Court has power under section 7(4) of the Court of Criminal Appeal Ordinance to quash the sentence and order that the appellant be kept in custody, such power can only be exercised if it appears to this Court that the accused was at the time the act was done incapable by reason of unsoundness of mind of knowing the nature of the act or that it was wrong or contrary to law.

This Court finds nothing in the evidence to suggest that the appellant was probably of unsound mind on the 14th July or to discharge the mild burden of proof prescribed in *Sodeman's* case, much less that on that date the accused was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The appeal is dismissed.

*Appeal dismissed.*

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[SPECIAL CRIMINAL JURISDICTION]

TERRELL, J.

March 5, 1938.

## REX v. G. H. KIAT.

[SINGAPORE POLICE COURT CASES Nos. 11403 and 11404 of 1938]

*Quarantine & Prevention of Disease—dogs—owner's duty to ensure effective control of—master's liability for servant's acts—mens rea—Quarantine (Veterinary) Rules, 1936, Rule 49 (ii) as amended by Government Gazette Notification dated 24-9-1937.*

Two dogs belonging to the accused were found out of doors. They were neither led, muzzled nor confined in an enclosed area from which it was impossible to escape. When the accused set out from his house early in the morning of the day of commission of the offence charged against him he left the dogs properly tied up indoors and in charge of his servant. He also gave the servant strict instructions to muzzle the dogs securely, but she disobeyed the instructions. The accused had no knowledge that the offence had been committed. Charged with contravening Rule 49 (ii) of the Quarantine (Veterinary) Rules, 1936, as amended by Government Gazette Notification dated 24th September 1937, the accused pleaded guilty and a nominal fine was imposed in each case. The Magistrate felt a doubt whether in the absence of proof of *mens rea* the convictions were sustainable, and referred this point to the High Court for decision.

*Held*, that the prohibition contemplated by Rule 49 (ii) is absolute, there being no such words as "knowingly" or "negligently" which would have the effect of casting upon the prosecution the burden of proving *mens rea* or of affording the accused an opportunity of proving that he acted innocently.

The absolute prohibition provided by the rule made under the Quarantine and Prevention of Disease Ordinance is justified by the consideration that the strictness of the rule is necessary for the public benefit and protection. A master is the only person in a position to control his servants; and, accordingly, the owner is made responsible for the acts of his servant whether or not such servant has carried out his master's instructions.

SPECIAL CASE STATED.

The facts of the case and the point of law stated for determination by the High Court sufficiently appear from the headnote above.

*Mallal* for the accused.

*Howe*, Crown Counsel, for the Crown.

*Cur. Ad. Vult.*

**TERRELL, J.**—This is a special case referred by the Fourth Magistrate to the High Court under the provisions of section 317 of the Criminal Procedure Code.

The facts are simple and are summarised by the learned Magistrate in the following order:—

At the hearing of the said charges it was proved before me that two dogs belonging to the accused were seen out of doors at 9 p.m. on 3/12/37 and that these dogs were neither led, muzzled nor confined in an enclosed area from which it was impossible to escape; that the accused set out from his house at 7-30 a.m. that day leaving the dogs properly tied up indoors and in charge of his servant; that he authorized his servant to let the dogs loose at 8 p.m. but gave her strict instructions to muzzle them properly when this was done; that the servant disobeyed her instructions in not muzzling the dogs; and that the accused who was absent was not in a position to know anything of the offence."

The accused pleaded guilty, and after consideration the learned Magistrate accepted the plea, and inflicted a nominal fine of $1/- in each case. As, however, the learned Magistrate felt a doubt whether in the absence of proof of *mens rea* the convictions could stand, he referred this question to the High Court for decision on the point of law.

The charges were framed under the provisions of Rule 49 (ii) of the Quarantine (Veterinary) Rules 1936 as amended by Government Gazette Notification No. 2782 dated 24th September 1937. The amended rule reads as follows:—

> Rule 49 (ii). "No owner or person in charge of a dog shall permit it to be out of doors within the infected area unless it is led by a chain or led of strong chord or leather so as to be at all times in effective control or wears a muzzle in such a manner as to render it impossible for the dog to inflict a bite or is confined within an enclosed area from which it is impossible for the dog to escape."

It will be seen that the prohibition contemplated by the rule is absolute. There are no such words as "knowingly" or "negligently," which might result either in the burden of proving *mens rea* being thrown upon the prosecution, or alternatively in the accused being given the opportunity of proving that he acted innocently. The principle upon which the Court acts is summarised by Atkin L.J. in *Mousell Bros. Ltd.* v. *London & North Western Railway Co.*, (1917) 81 J.P., p. 305, in the following terms:—

> "I think that authorities cited by my lord make it plain that while *prima facie* a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants. To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the Statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed."

This passage was cited with approval by the Lord Chief Justice in *Griffiths* v. *Studebaker Ltd.*, (1924) 1 K.B. p. 102.

The same principle has been adopted in the Straits Settlements and it is only necessary to refer to the decision of Whitley Ag. C.J. in *Ong Aik Phow* v. *Rex*, 6 M.L.J. p.73. This was a prosecution for an infringement of section 14 (1) of the Rubber Regulation Ordinance, 1934, which reads:—

> "No rubber shall be imported into the Colony unless it is accompanied by a certificate of origin duly authenticated by the competent authority in the country of origin."

It will be seen that under this Ordinance the prohibition against the importation of rubber not properly authenticated is absolute, just as is the prohibition under Rule 49 (ii) of the Quarantine Regulations, and Whitley J. had no difficulty in finding that there was no burden upon the prosecution to prove *mens rea*. He further held that when a prohibition is absolute in its terms it is not open to the accused to prove that he acted innocently. With these findings I respectfully agree, and as most of the relevant authorities are referred to in the judgment it is unnecessary for me to recapitulate them. I need only refer to the very recent case of *Chajutin* v. *Whitehead*, A.E.R. (1938) Vol. I, K.B.D. p.159. In that case an alien was charged with having in his possession an altered passport. The accused was convicted, but the appeal committee reversed the finding on two grounds, (a) that the prosecution must prove guilty knowledge and (b) that the accused did not in fact know that the passport had been altered and had acted innocently. On an appeal to the King's Bench Division the Court (Lord Hewart L.C.J., Branson and Humphreys JJ.) restored the conviction of the Magistrate. The following passage is taken from the judgment of Lord Hewart:—

> "The case seems to me to fall within the large and comprehensive classes of cases where if a person does the act which is prohibited by the Statute, that fact imputes to him a sufficient degree of *mens rea* to bring it about that the offence is proved. It is manifest, as indeed counsel for the defendant appears to recognize, that the extreme proposition which the

appeal committee have formulated (i.e. that the onus is on the prosecution to prove guilty knowledge) cannot be defended. But the minor proposition seems to me to be also incapable of defence, involving as it does, reading into this part of the order some such words as 'unless the person is acting innocently whereof the proof shall rest upon him'..... That seems to me to be really rewriting the order."

It must be remembered that in the present case the absolute prohibition provided by the Rule made in pursuance of the Ordinance is justified by the consideration that the strictness of the rule is necessary for the public benefit and protection. A master is the only person in a position to control his servant; and accordingly the owner is made responsible for the acts of his servant whether or not such servant has carried out his master's instructions. I would add that I do not subscribe to the view that where guilty knowledge is negatived, the owner is only liable for a nominal fine. If that principle were accepted the object of the rule would be defeated, though obviously the fine should be heavier where the owner is morally as well as legally responsible.

In my opinion, therefore, the convictions were correct.

*Convictions confirmed.*

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[SPECIAL CRIMINAL JURISDICTION]

TERRELL. J.

May 1, 1938.

## REX v. TAY KIAT HIANG.

[SINGAPORE SPECIAL CASE No. 5 of 1938.]

*Municipal Ordinance—S. 195 (7)—"Goods of any kind."*

In S. 195(7) of the Municipal Ordinance the words "for goods of any kind" are not to be construed as *ejusdem generis* with "food and drinks" which immediately precede it. The Ordinance contemplates that a licence must be taken out by an itinerant hawker for the sale of goods or other food and drink as well as for the sale of food and drink.

SPECIAL CASE STATED.

The facts and arguments are sufficiently related in the judgment.

*Howe*, Crown Counsel for the Crown.

*Cur. Ad. Vult.*

**TERRELL, J.**—There is no justification for holding that 'goods of any kind' in section 195 (7) of the Municipal Ordinance should be construed as *ejusdem generis* with 'food and drink.'

The argument would have been more plausible if the expression had been 'food drink and *other goods*' instead of 'food drink and goods of any kind,' but even if such an expression had been used, the context and general purposes of the Ordinance might satisfy the Court that 'other goods' should not be construed as *ejusdem generis* with what has gone before (*Richarmond Hill Steamship Co.* v. *Corporation of Trinity House*, (1896), 2 Q.B. p. 134.

In the present case, if reference is made to the previous section, section 194, it will be found that section 194 (4) (a) makes it an offence to set up a stall etc. for the purposes of selling food or drink unless the stall holder is licensed. Then section 194 (4) (b) applies the identical provisions where the stall is for the sale of "goods other than food or drink." Obviously therefore the Ordinance contemplates a licence for the sale of goods other than food and drink, and the doctrine of *"noscitur a sociis"* is quite inapplicable.

The opinion of the Court, therefore, is that an offence was disclosed by the evidence. In view however of the triviality of the matter the Court considers it unnecessary for the accused in this case to be charged again.

*Judgment accordingly.*

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END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.